

Attachment A

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA **FILED**

FEB 24 2020

Wilbert McKreith

Your full name

U.S. DISTRICT COURT-WVN
CLARKSBURG, WV 26301

**FEDERAL CIVIL RIGHTS
COMPLAINT
(BIVENS ACTION)**

v.

B.O.P. STAFF MR. K. PEARCE
B.O.P. STAFF MR. SHEARER
B.O.P. STAFF MR. S. Phipps

Civil Action No.: 1:19-cv-106
(To be assigned by the Clerk of Court)

1:20-cv-33

Kleeh
Alo
Williams

Enter above the full name of defendant(s) in this action

I. JURISDICTION

This is a civil action brought pursuant to **Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics**, **403 U.S. 388 (1971)**. The Court has jurisdiction over this action pursuant to Title 28 U.S.C. §§ 1331 and 2201.

II. PARTIES

In Item A below, place your full name, inmate number, place of detention, and complete mailing address in the space provided.

A. Name of Plaintiff: Wilbert McKreith Inmate No.: 14398050
Address: U.S.P. ATWATER, P.O. BOX 019001, ATWATER, CA
95301

In Item B below, place the full name of each defendant, his or her official position, place of employment, and address in the space provided.

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B. Name of Defendant: MR. K. PEARCE
Position: FEDERAL BUREAU OF PRISON SHU-STAFF
Place of Employment: UNITED STATES PENITENTIARY HAZELTON
Address: P.O. BOX 2000, BRUCETON MILLS, WV 26525

Was this Defendant acting under the authority or color of federal state law at the time these claims occurred? Yes No

If your answer is "YES," briefly explain: B.O.P. STAFF MR. K. PEARCE AND OTHERS TOOK ME AND MY CELL-MATE OUT OF THE CELL FOR A CELL SEARCH. MR. K. PEARCE RETURN TO ME AND STATED "CUFF UP NIGGER" MR. K. PEARCE CALL ME A NIGGER

B.1 Name of Defendant: B.O.P. STAFF LT. MR. SHEARER
Position: SHU-LIEUTENANT
Place of Employment: FEDERAL BUREAU OF PRISON U.S.P. HAZELTON
Address: P.O. BOX 2000, BRUCETON MILLS, WV 26525

Was this Defendant acting under the authority or color of federal state law at the time these claims occurred? Yes No

If your answer is "YES," briefly explain: MR. SHEARER HAD A CONVERSATION WITH MR. K. PEARCE AT THE TIME. MR. SHEARER GAVE THE ORDER OR REQUEST FOR THE USE OF FORCE TEAM AND APPLICATION OF RESTRAINTS FOR FOUR DAYS 6-16-2016 TO 6-19-2016

B.2 Name of Defendant: MR. J. PHIPPS
Position: CAPTAIN - U.S.P. HAZELTON COMPLEX
Place of Employment: UNITED STATES PENITENTIARY HAZELTON
Address: P.O. BOX 2000, BRUCETON MILLS, WV 26525

Was this Defendant acting under the authority or color of federal state law at the time these claims occurred? Yes No

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If your answer is "YES," briefly explain: MR. S. Phipps
Had a conversation with the SHUT MR. SHEARER
AND MR. S. Phipps GAVE THE ORDER TO PLACE
I WILBERT MCKEEITH "PLAINTIFF" IN RESTRAINTS FOR
FOUR DAYS 6-16-2016 to 6-19-2016 FOR NO REASON AT ALL.

B.3 Name of Defendant: NONE
Position: _____
Place of Employment: _____
Address: _____

Was this Defendant acting under the authority or color of federal state
law at the time these claims occurred? Yes No

If your answer is "YES," briefly explain: _____

B.4 Name of Defendant: NONE
Position: _____
Place of Employment: _____
Address: _____

Was this Defendant acting under the authority or color of federal state
law at the time these claims occurred? Yes No

If your answer is "YES," briefly explain: _____

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B.5 Name of Defendant: NONE
Position: _____
Place of Employment: _____
Address: _____

Was this Defendant acting under the authority or color of federal state law at the time these claims occurred? Yes No

If your answer is "YES," briefly explain: _____

III. PLACE OF PRESENT CONFINEMENT

Name of Prison/ Institution: U.S.P. Atwater, P.O. Box 019001, Atwater, CA 95301

A. Is this where the events concerning your complaint took place?
 Yes No

If you answered "NO," where did the events occur?

U.S.P. Hazelton, P.O. Box 2000, Bruceton Mills, WV 26525

B. Is there a prisoner grievance procedure in the institution where the events occurred? Yes No

C. Did you file a grievance concerning the facts relating to this complaint in the prisoner grievance procedure?
 Yes No

D. If your answer is "NO," explain why not: _____

E. If your answer is "YES," identify the administrative grievance procedure number(s) in which the claims raised in this complaint were addressed

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and state the result at level one, level two, and level three. ATTACH GRIEVANCES AND RESPONSES:

LEVEL 1 FEDERAL TORT CLAIM

LEVEL 2 _____

LEVEL 3 _____

IV. PREVIOUS LAWSUITS AND ADMINISTRATIVE REMEDIES

A. Have you filed other lawsuits in state or federal court dealing with the same facts involved in this action? Yes No

B. If your answer is “YES”, describe each lawsuit in the space below. If there is more than one lawsuit, describe additional lawsuits using the same format on a separate piece of paper which you should attach and label: “IV PREVIOUS LAWSUITS”

1. Parties to this previous lawsuit:

Plaintiff(s): _____

Defendant(s): _____

2. Court: _____

(If federal court, name the district; if state court, name the county)

3. Case Number: _____

4. Basic Claim Made/Issues Raised: _____

5. Name of Judge(s) to whom case was assigned: _____

6. Disposition: _____

(For example, was the case dismissed? Appealed? Pending?)

7. Approximate date of filing lawsuit: _____

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8. Approximate date of disposition. Attach Copies: _____

C. Did you seek informal or formal relief from the appropriate administrative officials regarding the acts complained of in Part B?

Yes No

D. If your answer is “YES,” briefly describe how relief was sought and the result. If your answer is “NO,” explain why administrative relief was not sought.

*FILE A TART CLAIM, TART AGAINST my
Body in the AMOUNT THE RESULT WAS DENIED*

E. Did you exhaust available administrative remedies?

Yes No

F. If your answer is “YES,” briefly explain the steps taken and attach proof of exhaustion. If your answer is “NO,” briefly explain why administrative remedies were not exhausted.

*I FILE A TART CLAIM A TART AGAINST my Body
my BODY WAS OBJECTED TO RESTRAINTS FOR 4-DAYS*

"PROOF of TART claim EXHAUSTION ATTACH"

G. If you are requesting to proceed in this action *in forma pauperis* under 28 U.S.C. § 1915, list each civil action or appeal you filed in any court of the United States while you were incarcerated or detained in any facility that was dismissed as frivolous, malicious, or for failure to state a claim upon which relief may be granted. Describe each civil action or appeal. If there is more than one civil action or appeal, describe the additional civil actions or appeals using the same format on a separate sheet of paper which you should attach and label “G. PREVIOUSLY DISMISSED ACTIONS OR APPEALS”

1. Parties to previous lawsuit:

NONE

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Plaintiff(s): _____

Defendant(s): _____

2. Name and location of court and case number:

3. Grounds for dismissal: frivolous malicious
 failure to state a claim upon which relief may be granted

4. Approximate date of filing lawsuit: _____

5. Approximate date of disposition: _____

V. STATEMENT OF CLAIM

State here, as **BRIEFLY** as possible, the facts of your case. Describe what each defendant did to violate your constitutional rights. You must include allegations of specific wrongful conduct as to **EACH** and **EVERY** defendant in the complaint. Include also the names of other persons involved, dates, and places. Do not give any legal arguments or cite any cases or statutes. If you intend to allege a number of related claims, you must number and set forth each claim in a separate paragraph. **UNRELATED CLAIMS MUST BE RAISED IN SEPARATE COMPLAINTS WITH ADDITIONAL FILING FEES. NO MORE THAN FIVE (5) TYPED OR TEN (10) NEATLY PRINTED PAGES MAY BE ATTACHED TO THIS COMPLAINT. (LR PL 3.4.4)**

CLAIM 1: *B.D.P. STAFF MR. K. PEARCE CALL ME A NIGGER, MR. K. PEARCE REPORTED TO HIS LT. MR. SHEARER FALSE STATEMENTS ABOUT I "PLAINTIFF" WILL NOT COOPERATE. FALSE STATEMENTS MADE BY MR. K. PEARCE AFTER HE CALL ME A NIGGER. THEN REQUEST WAS MADE TO PLACE ME IN RESTRAINTS*

Supporting Facts: *TORT CLAIM STATEMENT MADE AT FIRST*

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SEE SUPPORTING FACTS: "FCC HAZELTON
ADMINISTRATIVE REMEDY INFORMAL RESOLUTION RESPONSE"
By MR. J. PHIPPS.

CLAIM 2: MR. SHEARER LT, MADE FALSE STATEMENTS TO MR. J. PHIPPS IN REQUESTING TO PLACE "PLAINTIFF" INTO RESTRAINTS AFTER MR. K. PEARCE CALLED "PLAINTIFF" A NIGGER

Supporting Facts: MR. J. PHIPPS - FCC HAZELTON
ADMINISTRATIVE REMEDY INFORMAL RESOLUTION RESPONSE
MR. J. PHIPPS MADE FALSE STATEMENTS AS TO WHETHER B.D.P. POLICY OR PROCEDURES WERE BROKEN BY SHAV LIEUTENANT MR. SHEARER BY PLACING ME IN RESTRAINTS.

CLAIM 3: MR. K. PEARCE, MR. SHEARER AND MR. J. PHIPPS
IN VIOLATION OF B.D.P. POLICY # 5566.06, 8th
AMENDMENT RIGHTS, 4th AMENDMENT RIGHT TO DUE PROCESS
AND STATED IN B.D.P. EMPLOYEE POLICY # 3420.11

Supporting Facts: B.D.P. PROGRAM STATEMENT # 3420.11 NATURE
OF OFFENSE # 34 FALSEIFICATION, MISSTATEMENTS.
MR. J. PHIPPS REPORT
INMATE DISCIPLINE DATA CHRONOLOGICAL DISCIPLINARY
RECORD.

CLAIM 4: _____

Supporting Facts: _____

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CLAIM 5: _____

Supporting Facts: _____

VI. INJURY

Describe **BRIEFLY** and **SPECIFICALLY** how you have been injured and the exact nature of your damages.

I WAS PLACE IN FULL RESTRAINTS FOR 4-DAYS FROM 6-16-2016 TO 6-19-2016, AFTER I WAS CALL A NIGGER. IN VIOLATION OF 8th AMENDMENT, 4th AMENDMENT, IN VIOLATION OF B.D.P. policy # 5566.06. THERE WAS NO DUE PROSESSES.

VII. RELIEF

State **BRIEFLY** and **EXACTLY** what you want the Court to do for you. *Make no legal arguments. Cite no cases or statutes.*

I WILL LIKE THIS COURT TO GRANT THIS BIVENS ACTION AT THIS TIME. I AM SEEKING DAMAGES FOR 8th AND 4th AMENDMENTS VIOLATION, DUE PROSESSES VIOLATION. PUNITIVE DAMAGES FOR \$50,000.00

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DECLARATION UNDER PENALTY OF PERJURY

The undersigned declares under penalty of perjury that he/she is the plaintiff in the above action, that he/she has read the above complaint and that the information contained in the complaint is true and accurate. Title 28 U.S.C. § 1746; 18 U.S.C. § 1621.

Executed at U.S.P. Atwater, California on February 18, 2020.
(Location) (Date)


Your Signature